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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass/3/F
Washington, D.C. 20536

File: [redacted] Office: LOS ANGELES, CA Date: APR 29 2003

IN RE: Applicant: [redacted]

Application: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

The applicant is a native and citizen of Korea who was found by the district director to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud or willful misrepresentation. The applicant is the son of a naturalized United States citizen mother and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and adjust his status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal.

On appeal, counsel asserted that the applicant's mother would suffer extreme hardship if the applicant were removed from the United States because the mother is 68-years-old, in poor health, and is unable to live by herself. Counsel stated that the mother is financially dependent on the applicant, lives with him, and has no one else in the United States with whom she would be able to live if he were removed.

On motion, counsel submits a brief and declarations from the applicant's sisters. Counsel asserts that in this case, there is a significant physical dependence by the mother on the son's assistance and there are no alternatives if he leaves the country. Counsel asserts that the applicant's mother would suffer severe physical hardships, to the extent that her health and well-being would be jeopardized, if the applicant were removed from the United States.

The record reflects that the applicant sought to procured admission into the United States on August 19, 1994 by presenting an alien registration card in another person's name.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque*, 12 I&N Dec. 633 (BIA 1968).

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present time, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, supra, the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record reflects that the applicant's mother, a native of Korea, entered the United States in 1988. She lived with her United States citizen daughter from the date of her entry until 1996. During that time, she became a lawful permanent resident of the United States and subsequently, in 1999, naturalized as a United States citizen. Aside from the applicant and her United States citizen daughter, the mother has another daughter who lives in the United States as a lawful permanent resident, and another son who resides in Korea.

The record contains a statement from the applicant's mother dated October 9, 2001 asserting that she is no longer welcome to live with her United States citizen daughter because of the stress her presence caused in that daughter's marriage. She also asserts that she cannot live with her lawful permanent resident daughter because they are not close and that daughter has only a small apartment and limited income. She states that she depends on the applicant and his wife for emotional, physical, and financial support and that without the applicant's presence, she would be severely depressed, deprived of close human contact, and have no one to count on to

help her with her daily activities.

On appeal, counsel states that the applicant regularly provides his mother with transportation to her doctor and church. He cooks her food and makes sure she follows a recommended diet, makes sure she takes her daily medications and gets adequate exercise, and provides her with companionship. The applicant's sisters in the United States, both of whom also live in Los Angeles, indicate that they have limited incomes and are unable to care for their mother or afford to pay for her to live in a retirement home or assisted care facility.

In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). Further, the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being removed. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994).

In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant's mother has family ties in Korea. No information concerning adverse conditions in Korea is contained in the record. As the applicant's mother is not employed, there is no economic hardship that would result from her relocation to Korea in order to remain with her son. Furthermore, although the applicant's mother is seventy years-old and suffering degenerative health, there is no evidence contained in the record that she has a significant condition of health for which treatment would be unavailable in Korea.

A review of the factors presented, and the aggregate effect of those factors, indicates that the applicant's mother would suffer hardship due to separation if she were to remain in the United States and the applicant were removed. There is no documentary evidence contained in the record, other than affidavits provided by the applicant's siblings, that there are no alternatives for the mother's care in the United States if she does not relocate with the applicant abroad.

The applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal disruptions involved in the departure of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing the favorable or unfavorable exercise of the Attorney General's discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed. The application will be denied.

ORDER: The order of the AAO dated March 1, 2002 dismissing the appeal is affirmed. The application is denied.